

just what is meant, but I suppose, if would be a rare case when we would not want at least to offer a hearing.

7 July 1959

STATINTL

[redacted]

7/8/59

OGC Has Reviewed

MEMORANDUM FOR THE RECORD

SUBJECT: Employee Discharge

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1. On 1 April 1959 in the argument before the Supreme Court in the case of [redacted] the following colloquy took place:

Mr. Justice Harlan: "What you are saying in effect is that due process is satisfied if the agency gives the employee the opportunity to be heard in his defense. Could the Government discharge him without a hearing?"

The Solicitor General: "It might be so irrational that it couldn't be done."

Mr. Justice Harlan: "Then due process requires some kind of hearing?"

The Solicitor General: "Yes. A process of balancing is involved."

Mr. Justice Harlan: "Then the Government can't deny the right to a hearing of some kind?"

The Solicitor General: "I don't think so."

Mr. Justice Harlan: "Can they deny him the right to see witnesses whose information the Government is acting upon?"

The Solicitor General: "Only if the court decides that the maintenance of the Government's intelligence system is involved, as balanced against the interest of the employee."

2. The above took place in the arguments in a case involving employees of private firms fired by their employers because the Government under the Industrial Security Program suspended the privilege of the employee to view classified information. It is impossible to tell whether the above colloquy was actually intended to pertain to Government employees. However, Mr. Justice Harlan's question reads as if he had an interest in knowing what rights a Government employee had when confronted with a termination of his employment.

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